

ANALYSIS: Amended Kosovo Indictment Adds Little

Author: [IWPR](#)

Publication of an amended Kosovo indictment leaves doubt over whether genocide charges will ever be brought for atrocities in the province.

On June 29, 2001, the day former Yugoslav president Slobodan Milosevic was transferred to The Hague, the tribunal chief prosecutor filed an amended indictment against him for alleged crimes in Kosovo. It was definitely less than promised.

Since taking over as chief prosecutor some 22 months ago, Carla Del Ponte has given repeated assurances that her staff was conducting investigations in Bosnia and Croatia with a view to amending the indictment against Milosevic, to include additional charges relating to crimes committed during the Balkan conflicts.

On release of the amended indictment Del Ponte gave further guarantees additional charges would be soon forthcoming, stressing that prosecution on the Kosovo indictment was "only at the start of the case against Slobodan Milosevic, not at the end. In the weeks and months to follow, you will see how the whole case develops".

The amended version, like the original indictment filed on May 24, 1999, covers limited crimes allegedly committed by Serbian forces in Kosovo between January 1 to June 20, 1999. In both versions, charges are confined to three counts of crimes against humanity and one count for war crimes.

Over six years ago, former Bosnian Serb leader Radovan Karadzic and former Bosnian Serb army commander General Ratko Mladic were indicted for genocide, crimes against humanity, and war crimes allegedly committed by Bosnian Serb forces in Bosnia between April 1992 and July 1995 and in Srebrenica in July 1995. Throughout her tenure as chief prosecutor, Del Ponte has demanded loudly and tenaciously that the surviving chief architects of Balkan ethnic cleansing - Milosevic, Karadzic, and Mladic - be arrested and transferred to The Hague for trial post haste.

Whether genocide charges will be levelled against Milosevic and certain of his subordinates for crimes committed throughout the territories of the former Yugoslavia remains to be seen. It looks likely such charges will not now be brought in relation to the atrocities in Kosovo.

The amended indictment filed on June 29 merely re-organises the presentation of facts and charges in the indictment and changes much of the tense from present to past. The nature of charges in the amended indictment is otherwise virtually identical to the original. As to additions, the last two paragraphs of the amendment track the agreements reached for the Federal Republic of Yugoslavia, FRY, and Serbia to withdraw from the territory of Kosovo.

More substantively, the amended version broadens the number of attacks, adding five localities in Kosovo where civilians were forced out of their villages, robbed, abused and occasionally murdered. Accordingly, five additional appendices are attached, listing persons killed in these locations where the names of the deceased are known.

However, no additional charges are included. The list of accused remains the same - Milosevic, FRY president and president of the Supreme Defence Council; Milan Milutinovic, Serbian president and member of the Supreme Defence Council; Nikola Sainovic, FRY Deputy Prime Minister; Colonel General Dragoljub Ojdanic, Chief of the General Staff of the Yugoslav Army; and Vljako Stojiljkovic, Serbian Interior Minister.

Each office noted above was purportedly the highest held by the accused at all times relevant to the charges in the indictment. The indictment portrays a consistent pattern of activity on the part of the Yugoslav army, Yugoslav and Serbian police forces and paramilitary units, which allegedly acted with the support, direction or encouragement of the accused while invading towns, forcibly expelling and displacing Kosovo Albanians from their homes and directing them toward Kosovo borders, destroying property, confiscating identification papers, killing, and otherwise terrorising and abusing Albanians throughout the territory of Kosovo.

The amendment adds little additional information as to background events, but does qualify that where the indictment alleges that the accused "committed" a crime "the prosecutor does not intend to suggest that any of the accused physically perpetrated any of the crimes charged, personally".

Like the initial indictment, the amendment fails to include any charges relating to sexual violence committed in Kosovo despite the fact that evidence of rape crimes have been extensively reported and documented by human rights organisations, local rape crisis centres, doctors, and others investigating abuses in the province.

The amended indictment thus continues to limit the charges to allegations that "forces of the FRY and Serbia harassed, humiliated, and degraded Kosovo Albanian civilians through physical and verbal abuse. The Kosovo Albanians were also persistently subjected to insults, racial slurs, degrading acts based on ethnicity and religion, beatings, and other forms of physical mistreatment".

The amended indictment is a carefully worded legal document which provides a concise historical background, a summary of the Serbian leadership structure in Kosovo during the first half of 1999, and a succinct catalogue of specific attacks waged against civilians and villages in Kosovo. It aptly chronicles certain crimes allegedly committed throughout Kosovo during part of a carefully orchestrated "campaign of terror and violence".

The five Serbian leaders are accused of individual responsibility under Article 7(1) of the Statute for planning, instigating, ordering, committing or otherwise aiding and abetting the planning, preparation or execution of the four counts alleged in the indictment. Additionally or in the alternative, four of the five - Milosevic, Milutinovic, Ojdanic, and Stojiljkovic - are charged with superior responsibility under Article 7(3) of the Statute for acts committed by subordinates to the extent that they had de jure or de facto authority or control over the individuals or the applicable ruling or governing institutions of Serbia.

The clarity and brevity of the current indictment provides the accused with sufficient information to mount their defence. Further, the use of the persecution charge to capture a range of serious crimes committed on political, racial, or religious grounds will likely serve to streamline the crimes, which has increased significance if the others accused in the indictment are still at large when the trial begins.

It is a safe bet the tribunal judges will accept additional indictments or even further amendments to the existing indictment against Milosevic to cover alleged crimes committed elsewhere in the former Yugoslavia.

But it is unlikely the judges' patience will continue indefinitely, especially if the chief prosecutor files a series of new amendments after having insisted repeatedly that her office is ready to try the accused. Indeed, the Yugoslav tribunal judges may heed the practice of the judges at the Rwanda tribunal, who have begun denying the prosecutor the ability to bring additional charges after a trial has begun unless exceptional circumstances can be shown.

Del Ponte's office has had two years to prepare the amendments to the Kosovo indictment, and as her office appears set to file additional indictments for alleged crimes in Bosnia and Herzegovina and Croatia, it looks likely that no genocide charges are to be brought against Milosevic for alleged atrocities in Kosovo.

New evidence coming to light in Serbia following the political changes could make a crucial difference. But if Milosevic is not to be charged with genocide in Kosovo, then it is extremely unlikely any lower ranking perpetrators ever will. It is doubtful therefore that The Hague tribunal will ever be called upon to answer the question of whether genocide was committed in Kosovo.

Kelly Askin is author of War Crimes Against Women: Prosecution in International War Crimes Tribunals.

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